

## Exhibit S

Scully, Thomas A.

May 15, 2007

Washington, DC

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris  
the Florida Keys, Inc. :  
v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
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| <p style="text-align: right;">Page 138</p> <p>1 Q. And it troubled the folks you were<br/>2 interfacing with as well, isn't that correct?<br/>3 MR. GOBENA: Objection. Form.<br/>4 THE WITNESS: I think everybody in the<br/>5 government knew the system was not good and my<br/>6 hospital knew the system was not good.<br/>7 BY MR. DALY:<br/>8 Q. And when you say everybody in the<br/>9 government knew the system was not good, you mean<br/>10 that the people, the staffers on the various<br/>11 congressional committees and CMS that you interfaced<br/>12 with, they were well aware that AWP as published by<br/>13 the compendia was substantially in excess of what<br/>14 providers could actually obtain these drugs for,<br/>15 correct?<br/>16 MR. GOBENA: Objection. Form.<br/>17 MR. BREEN: Objection. Form.<br/>18 THE WITNESS: I do not believe there was a<br/>19 real true understanding on how bad it was outside<br/>20 health care policy wonks, which I guess I consider<br/>21 myself one, until probably if you'd see one of my<br/>22 opening comments of this hearing was that I was</p>   | <p style="text-align: right;">Page 140</p> <p>1 I was doing what I should have been doing.<br/>2 BY MR. DALY:<br/>3 Q. And the politics that you reference. I<br/>4 mean, this Medicare reform got continually caught up<br/>5 in politics over the decade of the '90s, didn't it?<br/>6 MR. GOBENA: Objection. Form.<br/>7 THE WITNESS: Which?<br/>8 BY MR. DALY:<br/>9 Q. Reducing reimbursements below AWP as<br/>10 published by the compendia?<br/>11 MR. GOBENA: Objection. Form.<br/>12 MR. BREEN: Objection. Form. Breen.<br/>13 MR. GOBENA: Yes.<br/>14 BY MR. DALY:<br/>15 Q. Go ahead.<br/>16 A. Yes, I would say politics is a big factor<br/>17 because it was a technical debate among staff people<br/>18 versus many, many congressmen who didn't understand<br/>19 it and didn't care about the details, hear them<br/>20 screaming from their oncology friends in their own<br/>21 communities until it became a glaring enough outrage,<br/>22 it wasn't going to be fixed.</p>                                 |
| <p style="text-align: right;">Page 139</p> <p>1 telling Chairman Greene what I think, how valuable it<br/>2 was to raise the profile of this so more people<br/>3 understand how outrageous the policy was.<br/>4 So the issue was, was there a handful of<br/>5 policy wonks and health staffers and people probably<br/>6 in HCFA in the late '90s that understood this, and<br/>7 saw it needed to be fixed, yes, but their<br/>8 understanding of the fact that it should be fixed was<br/>9 vastly outweighed by the screaming of the parties,<br/>10 including my hospitals, who would have been affected<br/>11 by a fix.<br/>12 And so politically, it wasn't possible to<br/>13 do. And the Clinton Administration obviously failed.<br/>14 I watched them fail in their efforts and I was<br/>15 determined not to repeat that, and so I spent a lot<br/>16 of time from the first day I got to CMS trying to<br/>17 build up the political support to get this done. And<br/>18 I got shelled for the first day by most of the doctor<br/>19 groups, mainly doctor groups, mainly oncologists, for<br/>20 trying to do this, because they wanted to protect the<br/>21 revenue that they had, which was understandable.<br/>22 They were doing what they should have been doing, and</p> | <p style="text-align: right;">Page 141</p> <p>1 Q. And that was something that -- the<br/>2 politics was something, as I said, you just said you<br/>3 ran into when you began your tenure at CMS, right?<br/>4 A. I would say every day all three years I<br/>5 probably got more heat about this particular issue<br/>6 than almost anything else other than the Part D drug<br/>7 benefit.<br/>8 Q. And you mentioned that the Clinton<br/>9 Administration had attempted this in '97 as well and<br/>10 they ran into political backlash as well, correct?<br/>11 A. Yes.<br/>12 Q. And in fact, back when you were with the<br/>13 Bush Administration, the first Bush Administration in<br/>14 '90-'91, HCFA and the administration ran into<br/>15 political backlash when they attempted to reduce AWP<br/>16 during that time frame as well?<br/>17 MR. GOBENA: Objection. Form.<br/>18 BY MR. DALY:<br/>19 Q. Is that correct?<br/>20 MR. GOBENA: Objection. You can answer.<br/>21 BY MR. DALY:<br/>22 Q. Go ahead.</p> |

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| <p>1       A. Yes. I recall that that's the case.</p> <p>2       Q. You mentioned earlier this morning that</p> <p>3       you had some conversations with your predecessor in</p> <p>4       the office, Ms. Mindeparo. Do you recall that</p> <p>5       testimony generally?</p> <p>6       A. Yes.</p> <p>7       Q. And how many conversations about Medicare</p> <p>8       reform or the AWP issue did you have with her?</p> <p>9       MR. GOBENA: Objection. Form.</p> <p>10      THE WITNESS: I don't recall. She is a</p> <p>11     good friend. She was one of the people that</p> <p>12     convinced me to go back and take the job and we have</p> <p>13     been friends for a long time and we had discussions</p> <p>14     with her all the time on many different issues, and I</p> <p>15     still do.</p> <p>16      BY MR. DALY:</p> <p>17      Q. And is this in the -- what time frame are</p> <p>18     we talking about?</p> <p>19      A. She was the CMS administrator, I'm</p> <p>20     guessing from '97 until probably 2000, early --</p> <p>21     halfway through 2000. And then after that, she left</p> <p>22     and I spent a lot of time talking about whether I</p>  | <p>1       slightly different political situation. Most of the</p> <p>2       committee chairmen were people I had known for years.</p> <p>3       And she also had very good relations with them, but</p> <p>4       they had -- it was easier for opposition party to</p> <p>5       pick on them when they are trying to do</p> <p>6       administrative reforms. It was harder for the</p> <p>7       Republicans in Congress to pick on the Republican</p> <p>8       administration. They still did, but it was easier</p> <p>9       for me.</p> <p>10      Q. Okay. Do you remember when she said maybe</p> <p>11     -- or you mentioned that she said something to the</p> <p>12     effect of maybe they could have, should have</p> <p>13     approached it differently, is that what you said?</p> <p>14      A. Yes. I just don't remember the specifics.</p> <p>15     We had been -- we had many discussions about the</p> <p>16     policy generally and how it might have been fixed</p> <p>17     differently, and you know, what her priorities were,</p> <p>18     what mine should be. So I just don't remember</p> <p>19     specific conversations. I had many, many</p> <p>20     conversations with her.</p> <p>21      Q. And based on your conversations with</p> <p>22     Ms. Mindeparo, is it fair to say that she was also</p> |
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| <p>1       should take the job or not and a lot of time talking</p> <p>2       about staff when I first took the job. So I mean, I</p> <p>3       would say I probably talked to her every few weeks</p> <p>4       during the whole period, when she was administrator,</p> <p>5       when she was out, when I was administrator.</p> <p>6       Q. Okay.</p> <p>7       A. So I had many, many conversations with her</p> <p>8       about a wide variety of subjects.</p> <p>9       Q. Do you recall any conversations you had</p> <p>10      with her about the AWP issue?</p> <p>11      A. Not specifically, but I know I had many.</p> <p>12      Q. Do you remember generally what it is you</p> <p>13      talked about with her?</p> <p>14      A. I mean, specifically, thematically, her</p> <p>15      frustration, the same way that I had, that the system</p> <p>16      was broken and needed to be fixed. And that she had</p> <p>17      tried and that they probably should have maybe</p> <p>18      approached it differently and probably spent more</p> <p>19      time trying to get Congress to deal with it and make</p> <p>20      the changes. She obviously had a Democratic</p> <p>21      administration dealing with a mostly Republican</p> <p>22      Congress at the time, and I had the benefit of having</p> | <p>1       aware of the substantial spreads between AWP as</p> <p>2       published and actual acquisition costs for Medicare</p> <p>3       Part B drugs?</p> <p>4       MR. GOBENA: Objection. Form.</p> <p>5       THE WITNESS: Yes. She was clearly aware</p> <p>6       of it.</p> <p>7       BY MR. DALY:</p> <p>8       Q. And you talked to her about -- you said</p> <p>9       you talked to her about whether you should take the</p> <p>10      job?</p> <p>11      A. Yes.</p> <p>12      Q. And did she encourage you or discourage</p> <p>13      you?</p> <p>14      A. She encouraged me, and I had encouraged</p> <p>15      her to take it, she took it.</p> <p>16      Q. This is pay back for you?</p> <p>17      A. Kind of.</p> <p>18      Q. If we go back to your testimony, which I</p> <p>19      still think is in front of you, Exhibit Abbott 183,</p> <p>20      if we look at page 5 in the first full paragraph, you</p> <p>21      talk about prior agency attempts to remedy the</p> <p>22      disparities between AWP and the amount actually paid.</p>  |

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| <p>1 on page 6 of Exhibit Abbott 183?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Now, it says these -- in the next sentence</p> <p>4 -- "these wholesale prices were culled from wholesale</p> <p>5 catalogues circulated among the provider community."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Is that something that could have been</p> <p>9 done prior to 2000?</p> <p>10 MR. GOBENA: Objection to the form.</p> <p>11 MR. BREEN: Object to the form.</p> <p>12 MR. GOBENA: Objection. Form.</p> <p>13 THE WITNESS: In theory, I'm sure it could</p> <p>14 have been.</p> <p>15 BY MR. DALY:</p> <p>16 Q. In other words, there were wholesale</p> <p>17 catalogues in the provider community prior to 2000,</p> <p>18 right?</p> <p>19 MR. GOBENA: Objection. Form.</p> <p>20 MR. BREEN: Objection. Form.</p> <p>21 BY MR. DALY:</p> <p>22 Q. Go ahead.</p>  | <p>1 BY MR. DALY:</p> <p>2 Q. And do you know why they were sent to just</p> <p>3 simply be considered by the carriers in terms of</p> <p>4 developing their alternative wholesale prices as</p> <p>5 opposed to being directed to use them?</p> <p>6 MR. GOBENA: Objection. Form.</p> <p>7 THE WITNESS: I can give you my opinion</p> <p>8 since I wasn't there, but my opinion in having served</p> <p>9 as administrator is there are many, probably 80</p> <p>10 percent of Medicare prices on a regional basis are</p> <p>11 done by carrier medical directors and carriers, so</p> <p>12 it's not uncommon to leave this to the -- at that</p> <p>13 point, probably 26 Part B carriers.</p> <p>14 Especially sometimes when the</p> <p>15 administration doesn't want to make a tough decision,</p> <p>16 they ship it out to the largely Blue Cross carriers</p> <p>17 and let them make the decision and take the heat,</p> <p>18 which is my guess is what was going on here is they</p> <p>19 sent the information out to the medical directors,</p> <p>20 who are generally -- when allowed the discretion --</p> <p>21 can be pretty tough, hoping that they would crack</p> <p>22 down on this.</p> |
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| <p>1 A. Yes. I'm sure there were.</p> <p>2 Q. And in the next sentence, you say, "last</p> <p>3 year, HCFA sent this new information to Medicare</p> <p>4 carriers and instructed them to consider these</p> <p>5 alternative wholesale prices as another source of AWP</p> <p>6 data in determining their January 1, 2001 quarterly</p> <p>7 update for many of these drugs." Do you see that</p> <p>8 language?</p> <p>9 A. Yes.</p> <p>10 Q. And so it is your understanding that these</p> <p>11 were -- the DOJAWPs were sent to the carriers,</p> <p>12 correct?</p> <p>13 MR. GOBENA: Object to the form.</p> <p>14 BY MR. DALY:</p> <p>15 Q. Correct?</p> <p>16 A. It was before I got there, but my</p> <p>17 understanding is that's true.</p> <p>18 Q. And is it your understanding that they</p> <p>19 were also sent to the various state Medicaid units?</p> <p>20 MR. GOBENA: Object to the form.</p> <p>21 THE WITNESS: I don't know but from the</p> <p>22 testimony, it appears that they were.</p> | <p>1 And this was 95 percent politics, so I'm</p> <p>2 sure what happens is even though I wasn't there is</p> <p>3 that the administration got blasted by the cancer and</p> <p>4 oncology community, who is very good at doing that.</p> <p>5 And then they backed off and Congress also heard the</p> <p>6 heat and passed a prohibition in December of 2000.</p> <p>7 And in my opinion, that was both completely</p> <p>8 misdirected on a policy basis, but politics is</p> <p>9 politics and that's what drove this issue for 10</p> <p>10 years.</p> <p>11 MR. DALY: Lunch?</p> <p>12 MR. GOBENA: Sure.</p> <p>13 THE WITNESS: Can we do it quick, so we</p> <p>14 can get done today?</p> <p>15 MR. BREEN: How do we plan on dividing</p> <p>16 this up time-wise? Are you going to take the rest of</p> <p>17 the day with Mr. Scully, because we are certainly</p> <p>18 going to ask some questions on this side.</p> <p>19 MR. DALY: You know, I think we would have</p> <p>20 to see. I mean, I'd like to finish today, but I</p> <p>21 can't say that I will. I'm certainly going to try.</p> <p>22 MR. BREEN: I understand. I just want you</p>  |

44 (Pages 170 to 173)

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